

Appl. No. 10/006,671
Amdt. dated March 3, 2005
Reply to Office Action of October 6, 2004

PATENT

REMARKS/ARGUMENTS

Claims 1-4, 7-11, 14-17 and 27-31 are pending in the application.
Reconsideration of the rejection and allowance of claims 1-4, 7-11, 14-17 and 27-31 are requested.

Interview Summary

Applicants gratefully acknowledge that the Examiner granted a telephone interview on February 22, 2005. During the interview, Applicants discussed why the claims are not obvious under 35 U.S.C. §103(a) over Dubensky Jr. *et al.* (USPN 5,789,245) in view of Yu *et al.* (Vaccine (1997) 15(12/13):1396-1404) and further in view of Harley *et al.* (Clin. Micro. Reviews, 2001, 14(4):909-932).

First, Applicants stressed during the interview that there is no motivation to look to Dubensky *et al.* because Dubensky *et al.* make no suggestion that a filter pore size other than the one they teach is necessary or desirable to achieve pure virus preparation (*i.e.*, 0.8 microns for a first filter and 0.65 microns for a second filter; see USPN 5,789,245, column 120, example 10). Yu *et al.* and Harley *et al.* are silent on virus purification. Thus, there is not motivation to combine Dubensky *et al.* and/or Yu *et al.* and/or Harley *et al.* because neither their individual teachings nor their combined teachings would lead to the claimed method. The motivation to produce a smaller second filter size of between 0.1 to 0.5 microns came solely from the Applicants who surprisingly found that it would lead to an unusually pure virus preparation (see specification, page 6, paragraph 25 and page 7, paragraph 28).

Second, the Office has previously stated for the record that the Applicants have achieved *surprisingly* pure virus preparation and that the 0.5 micron filter is primarily responsible for such pure virus preparation (see Office Action dated March 24, 2004, page 5). In light of the fact that the Office has acknowledged the surprisingly pure virus preparation of the claimed method, the rejection under 35 U.S.C. §103(a) should be withdrawn.

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Third, Applicants emphasized that the Examiner's indicated size of an alphavirus (*i.e.*, 400 Å, see page 3 of the Office Action dated October 6, 2004) would not motivate the skilled artisan to design a filter in the range of between 0.1 to 0.5 microns. As noted during the interview, 400 Å is about 0.04 microns. Thus, the Examiner has provided no evidence for a motivation to design a second filter in a range of between 0.1 to 0.5 microns.

35 U.S.C. §103

Claims 1-4, 7-11, 14-17 and 27-31 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubensky Jr. *et al.* (USPN 5,789,245) in view of Yu *et al.* (Vaccine (1997) 15(12/13):1396-1404), both of record, and further in view of Harley *et al.* (Clin. Micro. Reviews, 2001, 14(4):909-932). The Office Action indicates that it would have been obvious to use a filter pore size of less than 0.65 microns given that the diameter of an alphavirus is known. The Office Action further indicates that the determination of the particular filter pore size ranges is within the ordinary skill of the ordinary worker as part of the process of normal optimization and one would have been motivated to use the a smaller pore size in order to obtain a highly purified product. The Examiner indicates that one would have a reasonable expectation of success that Ross River Virus would have been filtered through a pore size of 0.1 to 0.5 because the size of an alphavirus is about 400 Å in diameter.

The rejection is respectfully traversed.

As Applicants indicated during the interview (*supra*), there is no motivation to combine Dubensky *et al.* and/or Yu *et al.* and/or Harley *et al.* because neither their individual teachings nor their combined teachings would lead to the claimed method. In light of the arguments presented during the interview and reiterated herein, it is respectfully requested that the rejection of claims 1-4, 7-11, 14-17 and 27-31 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

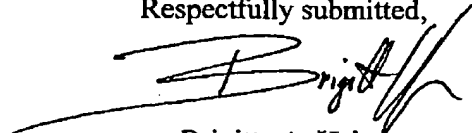
In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brigitte A. Hajos', with a long horizontal line extending to the left.

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